

The Public Defender—A New Bulwark

By JOHN B. WALLACE

IT IS difficult for the human race to devise a system whereby equal justice can be meted to all. Our judicial system is far from perfect but it is the fruit of centuries of experiment. It is an approximation of the ideal that we wish to attain.

Consequently every new idea that will tend to equalize the application of the law should be hailed with rejoicing by both the bar and the public. Yet this is far from being the case. There is no more conservative body of men than the average run of lawyers unless it is the country and small-town bankers. The slightest change or innovation in our system of administering justice is viewed with pessimistic alarm especially among the older members of the bar. Like the law itself, which, founded, as so much of it is, upon precedent, has tended to become as archaic and musty as the old tomes in which its precedents are bound.

This explains, perhaps, the reason for the delay in the general adoption throughout the country of the system of public defenders such as has been in successful operation for more than seven years in the county of Los Angeles in Southern California.

The idea of a public defender is far from being a new one. It has cropped up intermittently for years. Several eastern cities and two or three in the Middle West have officials styled as such but nowhere has there been a complete system established for the defense of the unfortunate and the confusion of those who prey upon them as exists in Los Angeles.

On every hand we hear voiced fear of Bolshevism and anarchy and the loudest and most persistent of these "Viewing with alarms" come from members of the bench and bar.

Yet, although there exists no more potent instrument for the smothering of the seeds of anarchy than the office of public defender, we find few of these vociferous reformers advocating any such constructive measure. It is not so much to the credit of the bar of Los Angeles County that they founded this much needed adjunct to our judicial system as it is to the discredit to the bar of the country as a whole that the system has not been universally adopted.

Before proceeding to a detailed description of the Los Angeles system, it might be well to point out the more patent defects in the system employed in other communities which the office of public defender is designed to correct.

The law has always recognized the right of a person accused of crime to a fair trial. In this country it has given the defendant the presumption of innocence, putting the burden of proving his guilt upon the state. We have also enunciated that all men are equal under the law. The law is the same for both rich and poor. Theoretically, this is true, but how has it worked out in practice? John Doe is a rich man. He is arrested upon suspicion of having committed a felony. We will assume that it is a bailable offense. As soon as he lands in the police station he telephones to his lawyer and to his friends. Before he may have had even a glimpse of a cell his bond is furnished and he is free until the day of his trial. He may have suffered a temporary inconvenience but that is all. When his trial comes up he is defended by the ablest attorneys that money can hire. Every advantage of law, both technical and social, is taken. The standing of the defendant, as well as the standing of his high-priced attorneys with the court, matters greatly. If the defendant is innocent or is acquitted (and the terms are not synonymous) he goes forth without having spent an hour in durance. If he is convicted he still may retain his freedom by putting up bail pending an appeal.

How is the case with Richard Roe, a poor laborer, equally a citizen of this great country with John Doe and theoretically entitled to equal rights and privileges? He is arrested upon suspicion of having committed the same kind of an offense as John Doe. Waiving the treatment that he will receive from the arresting officers, and, believe one who has had experience as a police reporter, there is a vast difference in the way a man of wealth and standing is handled upon arrest by police officers and a poor laborer without friends or influence; waiving that, however, Richard Roe, being without bail money or property security, is thrust into a cell to await his preliminary examination. If it is a case where the police have not yet obtained sufficient evidence to warrant the court to hold him for trial, he may be kept in jail for several weeks before he is given a preliminary hearing. This is in clear violation of the law but having no lawyer or money to hire one to get out a writ of habeas corpus, Roe has no recourse but to await the convenience of the police.

When he finally appears in court he is asked by the judge if he has an attorney. He replies that he is unable to hire one, whereupon the court appoints a lawyer to defend him. Here is another instance where theory and practice do not jibe.

An attorney, being an officer of the court, is compelled to defend any case to which he may be assigned. In some states he is allowed a nominal fee, in others no compensation whatever. A lawyer who depends upon his fees for his livelihood certainly cannot be censured for not wishing to take cases for nothing. He, therefore, can be depended upon to have some reasonable excuse for not taking the case and the judge being an attorney himself and fully understanding the situation will invariably accept the excuse.

There is, however, always a number of fledgling lawyers, just out of school, upon whose licenses the ink is scarcely dry, who are ready and anxious to obtain such cases for the experience. And it is upon these willing but inexperienced youths that Roe must rely

for his chance of liberty. Just as the body of the poor man is used for purposes of experiment by the youthful surgeons, so his freedom is in the hands of tyro attorneys. His lack of money prevents him from liberty of choice and he is compelled to accept what he may receive.

It was to correct this and other injustices that the office of public defender was instituted in Los Angeles County. Prominent jurists of Southern California had long noted these abuses and when in 1912 a new charter for the county was to be voted upon, a number of them got together and formulated a provision creating the office of public defender.

The duties of the public defender as outlined in Section 23 of the charter are:

"Upon request by the defendant or upon order of the court, the public defender shall defend, without ex-

pense to them, all persons who are not financially able to employ counsel and who are charged in the superior court, with the commission of any contempt, misdemeanor, felony or other offense. He shall also, upon request, give counsel and advice to such persons, in and about any charge



JUDGE
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against them upon which he is conducting the defense, and he shall prosecute all appeals to a higher court or courts, of any person who has been convicted upon any such charge, where, in his opinion, such appeal will, or might be reasonably expected to, result in the reversal or modification of the judgment of conviction.

"He shall

also, upon request, prosecute actions for the collection of wages and of other demands of persons who are not financially able to employ counsel, in cases in which the sum involved does not exceed \$100, and in which, in the judgment of the public defender, the claims urged are valid and enforceable in the courts.

"He shall also, upon request, defend such persons in all civil litigation in which, in his judgment, they are being persecuted or unjustly harassed.

"The costs in all actions in which the public defender shall appear under this section, whether for plaintiffs or for defendants, shall be paid out of the county treasury, at the times and in the manner required by law, or by rules of court, and under a system of demand, audit and payment which shall be prescribed by the board of supervisors.

"It shall be the duty of the public defender, in all such litigation, to procure, if possible, in addition to general judgments in favor of the persons whom he shall represent therein, judgments for costs and attorney fees, where permissible, against the opponents of such persons, and pay the same into the county treasury."

The salary of the public defender is fixed at \$375 a month during the first year he may hold office and \$400 a month thereafter. He is allowed to maintain such a force of deputies and office force as the business transacted by his office may require. At present the public defender of Los Angeles County has a force of five deputies, a clerk and a stenographer.

The positions of public defender and that of his deputies are under civil service rules and are obtained by competitive examination.

The county of Los Angeles was singularly fortunate in obtaining for the first two incumbents of the office of public defender men of marked ability, in the per-

sons of Walton J. Wood and William T. Aggeler. These men, together with a number of other prominent members of the bar in Los Angeles, took the civil service examination for the position when it was first created. Wood stood first and Aggeler second; Wood, therefore, obtaining the office and making Aggeler his chief deputy.

On the strength of his record as public defender, Wood was last autumn elected as a judge of the superior court and Aggeler took his place as public defender.

The incumbent is a native of California and a graduate of the University of Michigan. Although he had a successful private practice, this is his first public office.

His induction into the office of public defender was accompanied by unusual circumstances. His first case was one of the most sensational murder trials known in the history of criminology, a case that embraced every element of romance, mystery and finance and was exploited upon the front pages of all the newspapers in the country.

A handsome matron of unusual intelligence and charm was charged with the murder of a wealthy mining man whose body was found, after a search of several weeks, partially buried in the cellar of his mansion in Los Angeles. The woman, whose husband was a man of excellent character but in poor health and straightened financial circumstances, tried to employ counsel but was unable to pay the fees asked. These fees varied from \$15,000 to \$25,000. In despair she turned to the public defender. The evidence against her, while purely circumstantial, was overwhelming and she was convicted.

Although the public defender had made a fight which won the commendation of the trial judge who, denying a motion for a new trial, stated that everything possible had been done for her defense. The cost to the county was only \$130. Contrast this with the \$25,000 fee for attorneys alone that private counsel would have cost the defendant. In this case, which occupied 14 days in its trial, we had the unique spectacle of the state prosecuting and the state defending the accused with but one end in view, to obtain justice at the least possible cost to the citizens of the community.

Although the public defender's office lost this, the most spectacular case since its establishment, it has made a most unusual record in obtaining acquittals.

It is estimated that ninety per cent of the cases tried by the state result in convictions. This is because of the fact that the district attorneys can pick their cases and most of them refuse to put the state to the expense of a trial unless they are practically certain of obtaining a conviction. It does not enhance the reputation of a district attorney, either, to fall down on very many of his cases and consequently he goes into court with a case half won before it is tried. On the other hand the public defender has no choice. He is compelled to take the cases as they come to him when the accused maintains his innocence. Notwithstanding this handicap the public defender's office has never fallen below 25 per cent in acquittals and disagreements, and one year it reached as high as 44 per cent. This speaks volumes for the ability and diligence of the men occupying that office and proves that the defense of the poor is in as good hands as if they were able to employ the highest priced lawyers.

The report for the last court year, 1919-1920, shows that the public defender's office handled 469 criminal cases. This was in addition to 89 consultations with prisoners in jail, where advice was given but the cases turned over to other lawyers.

Of the felony cases tried during the year twelve were found guilty, two were convicted of lesser offenses than that charged in the information, seven were acquitted, and five were discharged because the jury could not agree.

Five insanity trials were handled in which two were proved to be sane and the other three committed to an institution.

In preliminary examinations in the superior court 31 defendants were held to answer, six were discharged and the cases dismissed and 34 were stricken from the calendar and the defendants released.

Thirteen defendants in criminal cases were found to be insane and committed to institutions.

The public defender's office made 243 pleas of guilty in behalf of its clients and 12 pleas of guilty upon lesser offenses than charged in the information.

One hundred and thirteen defendants were granted probation, 49 had their cases dismissed without coming to trial and 122 cases were stricken from the calendar.

Not only does the public defender's office accomplish a great work in obtaining justice for unfortunates but there is no doubt but that it is of sound economic benefit to the state. Many times the public defender is able to obtain the confidence of a prisoner and obtain facts which, presented to the district attorney, result in his dismissing the case without trial, thus saving the state expense as well as releasing the defendant from prison where he is boarding at the expense of the taxpayers.

Although the public defender's office is an entirely separate institution from that of the district attorney they are both servants of the public and are supposed to work in harmony in the interest of justice and economy. The public defender, while fully protecting the interests of his client, has not the same incentive to delay and procrastinate as has a private attorney who hopes thus to justify his fee. Therefore, the slow wheels of justice are often speeded up through the

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WILLIAM T. AGGELER,
Public Defender of Los Angeles County.